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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

INDEMNITY INSURANCE COMPANY OF NORTH
AMERICA,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY, NYK LINE
(NORTH AMERICA) INC., NIPPON YUSEN KAISHA
(NYK LINE), JAGUAR FREIGHT SERVICES, JAGUAR
FREIGHT SERVICES, INC., BJ INTERNATIONAL,
INC.

Defendants.

ECF Case

07 CV 8243 (RJH)

**UNION PACIFIC RAILROAD COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES TO NYK LINE'S CROSS-CLAIM**

Defendant Union Pacific Railroad Company ("UP"), by its attorneys, Barry N. Gutterman & Associates, P.C., for its Answer and Affirmative Defenses to Nippon Yusen Kaisha and NYK Line (North America) Inc's. ("NYK") Cross-Claim, states as follows:

1-21. UP does not respond to paragraphs 1-21 of NYK's Answer and Cross-Claim as such allegations are not addressed to it.

22. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 22 of NYK's Answer and Cross-Claim and therefore denies the same and leaves NYK to its proof.
- 23-37. UP does not respond to paragraphs 23-37 of NYK's Answer and Cross-Claim as such allegations are not addressed to it.
38. UP denies the allegations contained in paragraph 38 of NYK's Answer and Cross-Claim.
39. UP denies knowledge or information sufficient to admit or deny the allegations contained in paragraph 39 of NYK's Answer and Cross-Claim and therefore denies the same and leaves NYK to its proof.

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

40. To the extent that the plaintiff and NYK failed to meet the minimum filing requirements of filing a proper written claim within the time prescribed, this lawsuit is time barred.

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

41. To the extent that NYK failed to file its cross-claim within the period proscribed, its cross-claim is time barred.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

42. The complaint and cross-claim fail to state a claim against UP on which relief may be granted.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

43. In the event that the plaintiff and/or NYK had not or has no title or interest in the shipment that is the subject of this action, then the plaintiff and/or NYK is not the real party in interest and is not entitled to maintain this suit.

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

44. In the event that said shipment moved subject to any statutory or contractual limitations of liability, either specifically agreed to or contained in any applicable tariffs and/or governing publications, the plaintiff and/or NYK may not recover in excess of such limitations.

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

45. Plaintiff's common law claims are preempted by federal law.

**AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE**

46. The bill of lading, tariffs and classifications and the governing publications do not contemplate responsibility for special damages. To the extent, that plaintiff and/or NYK seeks recovery for special damages, UP is not responsible.

WHEREFORE, defendant Union Pacific Railroad Company demands judgment; (1) dismissing NYK's Cross-Claim with prejudice, together with the costs, disbursements and reasonable attorneys fees; and (2) for such other or different relief as this Court may deem just and proper.

Dated: New York, New York
December 5, 2007

By: /s/ Barry N. Gutterman
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